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14 **UNITED STATES DISTRICT COURT**
15 **NORTHERN DISTRICT OF CALIFORNIA**
16 **OAKLAND DIVISION**

17 BRIAN GLAUSER, individually and on behalf
of a class of similarly situated individuals,

18 Plaintiffs,

19 v.

20 TWILIO, INC., a Delaware corporation; and
21 GROUPME, INC., a Delaware corporation,

22 Defendants.
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Case No. 4:11-cv-02584-PJH

**STIPULATED PROTECTIVE ORDER
FOR LITIGATION INVOLVING
HIGHLY SENSITIVE CONFIDENTIAL
INFORMATION AND/OR TRADE
SECRETS**

1 1. PURPOSES AND LIMITATIONS

2 Disclosure and discovery activity in this action are likely to involve production of
3 confidential, proprietary, or private information for which special protection from public
4 disclosure and from use for any purpose other than prosecuting this litigation may be warranted.
5 Accordingly, the parties hereby stipulate to and petition the Court to enter the following
6 Stipulated Protective Order (“Order”). The parties acknowledge this Order does not confer
7 blanket protections on all disclosures or responses to discovery and the protection it affords from
8 public disclosure and use extends only to the limited information or items entitled to confidential
9 treatment under the applicable legal principles. The parties further acknowledge, as set forth in
10 Section 13.3, this Order does not entitle them to file confidential information under seal. Civil
11 Local Rule 79-5 sets forth the procedures that must be followed and the standards that will be
12 applied.

13 2. DEFINITIONS

14 2.1 Challenging Party: A Party or Non-Party (defined below) that challenges the
15 designation of information or items under this Order.

16 2.2 “CONFIDENTIAL” Information or Items: Information any Producing Party (defined
17 below), including any Non-Party, in good faith believes to contain (a) such material or matter used
18 by it in, or pertaining to, its business, which is not generally known and which the Producing Party
19 normally would not reveal to third parties or would cause third parties to maintain in confidence;
20 (b) any trade secret or other confidential research, design, development, or commercial information;
21 and (c) information that should otherwise be subject to confidential treatment pursuant to the
22 Federal Rules of Civil Procedure, including but not limited to Rule 26(c)(1)(G).

23 2.3 Counsel (without qualifier): Outside Counsel of Record (defined below) and in-house
24 counsel (as well as their support staff).

25 2.4 Designating Party: A Party or Non-Party that designates information or items it
26 produces in disclosures or in responses to discovery as “CONFIDENTIAL,” “HIGHLY
27 CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE
28 CODE.”

1 2.5 Disclosure or Discovery Material: All items or information, regardless of the medium
2 or manner in which it is generated, stored, or maintained (including, among other materials,
3 testimony, transcripts, and tangible things), produced or generated in disclosures or responses to
4 discovery in this action.

5 2.6 Expert: A person with specialized knowledge or experience in a matter pertinent to the
6 litigation who (1) has been retained by a Party or its counsel to serve as an expert witness or as a
7 consultant in this action, (2) is not a past or current employee of a Party or a Party's competitor, and
8 (3) at the time of retention, is not anticipated to become an employee of a Party or a Party's
9 competitor.

10 2.7 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" Information or Items:
11 Extremely sensitive "Confidential Information or Items," disclosure of which to another Party or
12 Non-Party would create a substantial risk of serious harm that could not be avoided by less
13 restrictive means. This is limited to information a Producing Party, including any Non-Party, in
14 good faith believes to contain (a) such material or matter used by it in, or pertaining to, its business,
15 which is not generally known and which the Producing Party normally would not reveal to third
16 parties or would cause third parties to maintain in confidence; (b) any trade secret or other
17 confidential research, design, development, or commercial information; and (c) information that
18 should otherwise be subject to confidential treatment pursuant to the Federal Rules of Civil
19 Procedure, including but not limited to Rule 26(c)(1)(G), entitled to a higher level of protection due
20 to its commercial sensitivity.

21 2.8 "HIGHLY CONFIDENTIAL – SOURCE CODE" Information or Items: Extremely
22 sensitive "Confidential Information or Items" representing computer code and associated
23 comments and revision histories, formulas, engineering specifications, or schematics that define
24 or otherwise describe algorithms or structure of software or hardware designs, disclosure of which
25 to another Party or Non-Party would create a substantial risk of serious harm that could not be
26 avoided by less restrictive means.

27 2.9 Non-Party: Any natural person, partnership, corporation, association, or other legal
28 entity not named as a Party to this action.

1 2.10 Outside Counsel of Record: Attorneys who are not employees of a Party, but are
2 retained to represent or advise a Party and have appeared in this action on behalf of that Party, or
3 are affiliated with a law firm which has appeared on behalf of that Party.

4 2.11 Party: Any party to this action, including all of its officers, directors, employees,
5 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

6 2.12 Producing Party: A Party or Non-Party that produces Disclosure or Discovery
7 Material in this action.

8 2.13 Professional Vendors: Persons or entities that provide litigation support services
9 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing,
10 storing, or retrieving data in any form or medium), and their employees and subcontractors.

11 2.14 Protected Material: Any Disclosure or Discovery Material designated as
12 "CONFIDENTIAL," "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY," or as
13 "HIGHLY CONFIDENTIAL – SOURCE CODE."

14 2.15 Receiving Party: A Party that receives Disclosure or Discovery Material from a
15 Producing Party.

16 2.16 "SOURCE CODE LOG": The term SOURCE CODE LOG shall have the meaning
17 assigned to it in Section 8.2 below.

18 3. SCOPE

19 The protections conferred by this Stipulation and Order cover not only Protected
20 Material, but also (1) any information copied or extracted from Protected Material; (2) all copies,
21 excerpts, summaries, or compilations of Protected Material; and (3) any testimony, conversations,
22 or presentations by Parties or their Counsel that might reveal Protected Material. However, the
23 protections conferred by this Stipulation and Order do not cover the following information: (a)
24 any information in the public domain at the time of disclosure to a Receiving Party or becomes
25 part of the public domain after its disclosure to a Receiving Party as a result of publication not
26 involving a violation of this Order, including becoming part of the public record through trial or
27 otherwise; and (b) any information known to the Receiving Party prior to the disclosure or
28 obtained by the Receiving Party after the disclosure from a source who obtained the information

lawfully and under no obligation of confidentiality to the Designating Party. Any use of Protected Material at trial shall be governed by a separate agreement or order.

4. DURATION

Even after final disposition of this litigation, the confidentiality obligations imposed by this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order otherwise directs. Final disposition shall be deemed to be the later of: (1) dismissal of all claims and defenses in this action, with or without prejudice; and (2) final judgment herein after the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action, including the time limits for filing any motions or applications for extension of time pursuant to applicable law.

5. DESIGNATING PROTECTED MATERIAL

5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or Non-Party that designates information or items for protection under this Order must take care to limit any such designation to specific material that qualifies under the appropriate standards. To the extent it is practical to do so, the Designating Party must designate for protection only those parts of material, documents, items, or oral or written communications that qualify – so other portions of the material, documents, items, or communications for which protection is not warranted are not swept unjustifiably within the ambit of this Order.

Mass, indiscriminate, or routinized designations are prohibited. Designations shown to be clearly unjustified or made for an improper purpose (*e.g.*, to unnecessarily encumber or retard the case development process or to impose unnecessary expenses and burdens on other parties) expose the Designating Party to sanctions.

If it comes to a Designating Party's attention that information or items designated for protection do not qualify for protection at all, or do not qualify for the level of protection initially asserted, that Designating Party must promptly notify all other parties it is withdrawing the mistaken designation.

5.2 Manner and Timing of Designations. Except as otherwise provided in this Order (*see, e.g.*, second paragraph of Section 5.2(a) below), or as otherwise stipulated or ordered,

1 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so
2 designated before the material is disclosed or produced.

3 Designation in conformity with this Order requires:

4 (a) For information in documentary form (*e.g.*, paper or electronic documents, but
5 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party
6 affix the legend “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
7 ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” to each page that contains protected
8 material. If only a portion or portions of the material on a page qualifies for protection, the
9 Producing Party also must clearly identify the protected portion(s) (*e.g.*, by making appropriate
10 markings in the margins) and must specify, for each portion, the level of protection being asserted.
11 A Party or Non-Party that makes original documents or materials available for inspection need not
12 designate them for protection until after the inspecting Party has indicated which material it would
13 like copied and produced. During the inspection and before the designation, all of the material
14 made available for inspection shall be deemed “HIGHLY CONFIDENTIAL – ATTORNEYS’
15 EYES ONLY,” except as provided in Section 8.1(e). After the inspecting Party has identified the
16 documents it wants copied and produced, the Producing Party must determine which documents, or
17 portions thereof, qualify for protection under this Order. Then, before producing the specified
18 documents, the Producing Party must affix the appropriate legend (“CONFIDENTIAL,” “HIGHLY
19 CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE
20 CODE”) to each page that contains Protected Material. If only a portion, or portions of the material
21 on a page, qualifies for protection, the Producing Party also must clearly identify the protected
22 portion(s) (*e.g.*, by making appropriate markings in the margins) and must specify, for each portion,
23 the level of protection being asserted.

24 (b) For testimony given in deposition or in other pretrial or trial proceedings, except as
25 provided in Section 7.4 regarding the use of materials designated “HIGHLY CONFIDENTIAL –
26 SOURCE CODE,” that the Designating Party identify on the record, before the close of the
27 deposition, hearing, or other proceeding, all protected testimony and specify the level of
28 protection being asserted. When it is impractical to identify separately each portion of testimony

entitled to protection and it appears substantial portions of the testimony may qualify for protection, the Designating Party may invoke on the record (before the deposition, hearing, or other proceeding is concluded) a right to have up to 21 days to identify the specific portions of the testimony as to which protection is sought and to specify the level of protection being asserted. Only those portions of the testimony appropriately designated for protection within the 21-day period shall be covered by the provisions of this Order. Alternatively, a Designating Party may specify, at the deposition or up to 21 days afterward if that period is properly invoked, that the entire transcript shall be treated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

Parties shall give the other parties notice if they reasonably expect a deposition, hearing or other proceeding to include Protected Material so the other parties can ensure only authorized individuals who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A) are present at those proceedings. The use of a document as an exhibit at a deposition shall not in any way affect its designation as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE CODE.”

Transcripts containing Protected Material shall have an obvious legend on the title page that the transcript contains Protected Material, and the title page shall be followed by a list of all pages (including line numbers as appropriate) designated as Protected Material and the level of protection asserted by the Designating Party. The Designating Party shall inform the court reporter of these requirements. Any transcript prepared before the expiration of a 21-day period for designation shall be treated during that period as if it had been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety unless otherwise agreed. After the expiration of that period, the transcript shall be treated only as actually designated.

(c) For information produced in a non-paper media (*e.g.*, videotape, audiotape, computer disk, etc.), that the Producing Party label the outside of such non-paper media as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE CODE” and produce the material in a sealed envelope. In the event a Receiving Party generates any electronic copy, “hard copy,” transcription or

1 printout from any such designated non-paper media, such Party must treat each copy, transcription
2 or printout as designated and label it in a manner effective to ensure proper treatment. If only a
3 portion or portions of the information or item contained on the non-paper media warrant
4 protection, the Producing Party, to the extent practicable, shall identify the protected portion(s)
5 and specify the level of protection being asserted.

6 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
7 designate qualified information or items does not, standing alone, waive the Designating Party's
8 right to secure protection under this Order for such material. Upon timely correction of a
9 designation, the Receiving Party must make reasonable efforts to assure the material is treated in
10 accordance with the provisions of this Order.

11 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

12 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
13 confidentiality at any time. Unless a prompt challenge to a Designating Party's confidentiality
14 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
15 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to
16 challenge a confidentiality designation by electing not to mount a challenge promptly after the
17 original designation is disclosed.

18 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process
19 by providing written notice of each designation it is challenging and describing the basis for each
20 challenge. To avoid ambiguity as to whether a challenge has been made, the written notice must
21 recite that the challenge to confidentiality is being made in accordance with this specific
22 paragraph of the Order. The parties shall attempt to resolve each challenge in good faith and must
23 begin the process by conferring directly (in voice to voice dialogue; other forms of
24 communication are not sufficient) within 14 days of the date of service of notice. In conferring,
25 the Challenging Party must explain the basis for its belief that the confidentiality designation was
26 not proper and must give the Designating Party an opportunity to review the designated material,
27 to reconsider the circumstances, and, if no change in designation is offered, to explain the basis
28 for the chosen designation. A Challenging Party may proceed to the next stage of the challenge

process only if it has engaged in this meet and confer process first or establishes that the Designating Party is unwilling to participate in the meet and confer process in a timely manner.

6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court intervention, the Designating Party shall file and serve a motion to retain confidentiality under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) within 21 days of the initial notice of challenge or within 14 days of the Parties agreeing the meet and confer process will not resolve their dispute, whichever is earlier. Each such motion must be accompanied by a competent declaration affirming the movant has complied with the meet and confer requirements imposed in the preceding paragraph. Failure by the Designating Party to make such a motion, including the required declaration within 21 days (or 14 days, if applicable), shall automatically waive the confidentiality designation for each challenged designation. In addition, the Challenging Party may file a motion challenging a confidentiality designation at any time if good cause exists for doing so, including a challenge to the designation of a deposition transcript or any portions thereof. Any motion brought pursuant to this provision must be accompanied by a competent declaration affirming the movant has complied with the meet and confer requirements imposed by the preceding paragraph.

The burden of persuasion in any such challenge proceeding shall be on the Designating Party. Frivolous challenges and those made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on other Parties) may expose the Challenging Party to sanctions. Unless the Designating Party has waived the confidentiality designation by failing to file a motion to retain confidentiality as described above, all Parties shall continue to afford the material in question the level of protection to which it is entitled under the Producing Party's designation until the Court rules on the challenge.

7. ACCESS TO AND USE OF PROTECTED MATERIAL

7.1 Basic Principles. A Receiving Party may use Protected Material disclosed or produced by another Party or by a Non-Party in connection with this case only for prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to the categories of persons and under the conditions described in this Order. When the litigation has

1 been terminated, a Receiving Party must comply with the provisions of Section 14 below (FINAL
2 DISPOSITION).

3 Protected Material must be stored and maintained by a Receiving Party at a location and
4 in a secure manner that ensures access is limited to the persons authorized under this Order.

5 A list shall be maintained by Outside Counsel of Record for the Parties of the names of
6 all persons (except for Outside Counsel of Record and their support personnel) to whom any
7 Protective Material is disclosed, to whom the information contained therein is disclosed, and such
8 list shall be available for inspection by the Court or opposing counsel upon request, and with a
9 good faith belief this Order has been violated, except that a Party or a Party's counsel is not
10 required to identify by name an Expert, except as otherwise provided by the Federal Rules of
11 Civil Procedure, or Sections 7 and 8. Upon request made within 60 calendar days of the
12 termination of this lawsuit by settlement, final judgment, or otherwise, including final appellate
13 action, or the expiration of time to appeal or seek further review, the Parties shall provide
14 opposing counsel with a copy of the aforementioned lists, except a Party or a Party's Outside
15 Counsel of Record shall not be required to identify by name an Expert except as otherwise
16 provided by the Federal Rules of Civil Procedure or Sections 7 and 8, provided, however, upon a
17 showing by a Producing Party of a good faith basis for believing this Order has been violated, a
18 Party is required to disclose whether any Expert has been given access to Protected Material of the
19 type or category involved in the alleged or suspected breach.

20 Each individual who receives any Protected Material hereby agrees to subject
21 himself/herself to the jurisdiction of this Court for the purpose of any proceeding relating to the
22 performance under, compliance with, or violation of this Order. Each individual who receives
23 Protected Material is enjoined from disclosing that material to any other person, except in
24 conformance with this Order.

25 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered
26 by the Court, or permitted in writing by the Designating Party, a Receiving Party may disclose
27 any information or item designated "CONFIDENTIAL" only to:

28 (a) The Receiving Party's Outside Counsel of Record in this action, as well as

1 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the
2 information for this litigation and who have signed the “Acknowledgment and Agreement to Be
3 Bound” attached hereto as Exhibit A.

4 (b) The officers, directors, and employees (including in-house counsel) of the Receiving
5 Party to whom disclosure is reasonably necessary for this litigation and who have signed the
6 “Acknowledgment and Agreement to Be Bound” (Exhibit A).

7 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is
8 reasonably necessary for this litigation and who have signed the “Acknowledgment and
9 Agreement to Be Bound” (Exhibit A).

10 (d) The Court and its personnel.

11 (e) Court reporters and their staff, professional jury or trial consultants, and Professional
12 Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the
13 “Acknowledgment and Agreement to Be Bound” (Exhibit A).

14 (f) During their depositions, witnesses in the action to whom disclosure is reasonably
15 necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A),
16 unless otherwise agreed by the Designating Party or ordered by the Court. Pages of transcribed
17 deposition testimony or exhibits to depositions that reveal Protected Material must be separately
18 bound by the court reporter and may not be disclosed to anyone except as permitted under this
19 Order.

20 (g) The author or recipient of a document containing the information or a custodian or
21 other person who otherwise possessed or knew the information.

22 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”

23 Information or Items. Unless otherwise ordered by the Court, or permitted in writing by the
24 Designating Party, a Receiving Party may disclose any information or item designated “HIGHLY
25 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to the persons set forth in Sections
26 7.2(a), (c), (d), (e) and (g).

27 7.4 Disclosure of “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items.

28 To the extent a Party agrees to produce source code in this case, a Producing Party may designate

documents or other things as “HIGHLY CONFIDENTIAL – SOURCE CODE” if it comprises or includes confidential, proprietary or trade secret source code. Unless otherwise ordered by the Court, or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated “HIGHLY CONFIDENTIAL – SOURCE CODE” only to:

(a) Plaintiff’s Outside Counsel of Record.

(b) Experts of the Receiving Party (1) to whom disclosure is reasonably necessary for this litigation, (2) who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), and (3) as to whom the procedures set forth in paragraph 7.5, below, have been followed.

(c) Witnesses in deposition examinations, provided such witnesses are (1) the Producing Party, (2) the Producing Party’s present employees, officers, and directors, (3) former employees, officers, or directors of the Producing Party who reviewed the source code during the course of their employment with the Producing Party, and (4) the Producing Party’s technical advisers and experts.

(d) The Court, jury, court personnel, court reporters, and other persons connected with the Court.

Any information or item designated “HIGHLY CONFIDENTIAL – SOURCE CODE” shall not be used during a deposition of anyone, including third parties, not identified in Section 7.4(c). If information or an item designated “HIGHLY CONFIDENTIAL – SOURCE CODE” is made part of a deposition record, the source code and any testimony relating to it shall automatically be designated “HIGHLY CONFIDENTIAL – SOURCE CODE.”

7.5 Procedures for Approving or Objecting to Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items to Experts.

(a) Unless otherwise ordered by the Court or agreed to in writing by the Designating Party, a Party that seeks to disclose to an Expert (as defined in this Order) any information or item designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE,” pursuant to Sections 7.3 and/or 7.4(b), first must make a written request to the Designating Party that: (1) identifies the general categories of “HIGHLY

1 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE
2 CODE” information the Receiving Party seeks permission to disclose to the Expert; (2) sets forth
3 the full name of the Expert and the city and state of his or her primary residence; (3) attaches a copy
4 of the Expert’s current resume; (4) identifies the Expert’s current employer(s); (5) identifies each
5 person or entity from whom the Expert has received compensation or funding for work in his or her
6 areas of expertise or to whom the Expert has provided professional services, including in
7 connection with a litigation, at any time during the preceding five years; (6) identifies (by name and
8 number of the case, filing date, and location of court) any litigation in connection with which the
9 Expert has offered expert testimony, including through a declaration, report, or testimony at a
10 deposition or trial, during the preceding five years; and (7) provides a completed and signed copy of
11 the “Acknowledgment and Agreement to Be Bound” from the Expert attached hereto as Exhibit A.

12 If an Expert is precluded by virtue of a non-disclosure agreement from disclosing either
13 the existence or nature of any such engagement or the identity of the entity for which the services
14 were, or are being, performed, then the Expert shall state that certain information is being
15 withheld on that basis and may supplement his/her disclosure with such additional information as
16 he/she believes would be helpful to the Parties and the Court in determining whether any
17 undisclosed relationship would create a genuine likelihood the Expert would, in the course of any
18 such undisclosed engagement, use or disclose information designated as “HIGHLY
19 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE
20 CODE” for purposes other than this litigation.

21 (b) A Party that makes a request and provides the information specified in the preceding
22 respective paragraphs may disclose the subject Protected Material to the identified Expert unless,
23 within fourteen (14) days of delivering the request, the Party receives a written objection from the
24 Designating Party. Any such objection must set forth in detail the grounds on which it is based.

25 (c) A Party that receives a timely written objection must meet and confer with the
26 Designating Party (through direct voice to voice dialogue) to try to resolve the matter by
27 agreement within seven days of the written objection. If no agreement is reached, the Party
28 seeking to make the disclosure to the Expert may file a motion as provided in Civil Local Rule 7

(and in compliance with Civil Local Rule 79-5, if applicable) seeking permission from the Court to do so. Any such motion must describe the circumstances with specificity, set forth in detail the reasons why the disclosure to the Expert is reasonably necessary, assess the risk of harm that the disclosure would entail, and suggest any additional means that could be used to reduce that risk. In addition, any such motion must be accompanied by a competent declaration describing the Parties' efforts to resolve the matter by agreement (*i.e.*, the extent and the content of the meet and confer discussions) and setting forth the reasons advanced by the Designating Party for its refusal to approve the disclosure.

In any such proceeding, the Party opposing disclosure to the Expert shall bear the burden of proving the risk of harm the disclosure would entail (under the safeguards proposed) outweighs the Receiving Party's need to disclose the Protected Material to its Expert. Pending a ruling by the Court, the proposed expert shall not have access to material or information designated by the objecting party as "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL – SOURCE CODE."

8. SOURCE CODE PROTOCOL

8.1 Inspection of Source Code. In the event that the inspection of native source code becomes necessary in this case, the Producing Party shall disclose it in the following manner and subject to the following protections:

(a) The Producing Party will grant access to source code on only two "stand-alone" computers (the "Stand-Alone Computers") not connected to a network, internet or peripheral device, except that the stand-alone computers will be connected to the following peripherals: (1) stand-alone monitors with screens no smaller than 21 inches, (2) standard QWERTY keyboards, and (3) optical mice.

(b) The Producing Party shall not install any software or other device on the Stand-Alone Computers that tracks, records or monitors the Receiving Party's review activity, including the source code reviewed or accessed. Software mutually agreeable to the Parties will be installed on the Stand-Alone Computers, along with whatever additional plugins, if any, are necessary to adequately review the source code. None of the software or plugins, if any, shall have the ability

1 to compile, interpret or execute source code, and the Receiving Party is strictly prohibited from
2 compiling, interpreting and/or executing the source code.

3 (c) The Producing Party shall make the Stand-Alone Computers available at a secure
4 location at either its offices, or at the offices of its Outside Counsel of Record, as the Producing
5 Party may elect, during regular business hours (9:00 a.m. to 5:00 p.m. local time) on notice of five
6 (5) business days. Each Stand-Alone Computer may be equipped to store print requests in a print
7 folder subject to the limitations set forth in Section 8.3. No recordable media or recordable devices,
8 including without limitation sound recorders, cellular telephones, peripheral equipment, cameras,
9 CDs, DVDs, thumb drives or any other drives of any kind, shall be permitted in the room
10 containing the Stand-Alone Computers. The Producing Party may visually monitor the activities of
11 the Receiving Party's representatives during any code source inspection, but only to ensure no
12 unauthorized electronic records of the code or unauthorized information concerning the code are
13 created or transmitted in any way. Audio monitoring of the Receiving Party's representatives shall
14 not be permitted.

15 (d) Source code will be made available to the Receiving Party no more than three times
16 prior to Plaintiff filing his motion for class certification. The Producing Party agrees to consider
17 reasonable requests from the Receiving Party for additional source code review sessions if
18 additional time is warranted by, for example, the volume and complexity of the source code.

19 (e) Source code will be made available in its native, electronic format as the Producing
20 Party maintains the code in the ordinary course of business. During the review, the source code
21 shall be deemed "HIGHLY CONFIDENTIAL – SOURCE CODE."

22 (f) Persons authorized to review source code may make copies of the source code on the
23 Stand-Alone Computers solely for the purposes of reviewing and/or analyzing the source code. The
24 copies will remain on the Stand-Alone Computers and be subject to the provisions of this Order
25 governing materials designated "HIGHLY CONFIDENTIAL – SOURCE CODE." Under no
26 circumstances will the Receiving Party's Outside Counsel of Record, or anyone acting on behalf of
27 the Receiving Party, seek to compile or interpret, or, in fact, compile or interpret the source code or
28 copies thereof into executable code.

1 (g) In no event shall any review software be permitted to alter the source code, nor shall
2 persons authorized to review source code attempt to make any modifications to the source code.

3 (h) All paper copies of the source code, or pages containing printed portions of the
4 source code, including all such pages that may be printed by the Receiving Party, shall bear the
5 watermark "HIGHLY CONFIDENTIAL – SOURCE CODE" across each printed page. Under no
6 circumstances will the Receiving Party's Outside Counsel of Record, or anyone acting on behalf
7 of the Receiving Party, move any copies or portions of the source code outside the United States.

8 8.2 Source Code Log. The Receiving Party shall maintain a "SOURCE CODE LOG"
9 containing the following information: (1) the identity of each person granted access to the source
10 code in either electronic or paper form; (2) each date when such access was granted; and (3) each
11 paper copy made of any portion of the source code, including a designation of the portion(s) of
12 code copied. The Receiving Party shall maintain an updated version of the SOURCE CODE
13 LOG and shall provide a current copy of that log to the Producing Party as reasonably requested.
14 For security purposes, the Receiving Party must produce a copy of the log pursuant to this
15 paragraph regardless of any other stipulation of the Parties.

16 8.3 Requests for Paper Copies. A Receiving Party may request paper copies of reasonable
17 portions of code identified by the Receiving Party. Such requests shall be limited to paper copies
18 reasonably necessary for inclusion in Court filings, pleadings, expert reports, or other papers, or for
19 use in deposition or at trial. The Receiving Party's request shall not seek more than five (5)
20 contiguous pages of single spaced source code (12-point font size), and no more than fifty (50) total
21 pages. The Producing Party shall mark copies clearly and prominently as "HIGHLY
22 CONFIDENTIAL – SOURCE CODE" and affix individual production numbers and the source
23 code's native line numbers, and the Producing Party may, at its election, make copies on non-
24 copyable paper. To the extent the Producing Party provides printed copies on copyable paper, the
25 Receiving Party may make no more than three (3) additional paper copies of any portions of the
26 code received from the Producing Party, not including copies attached to court filings or used at
27 depositions, and shall maintain a log of all paper copies of the code received from the Producing
28 Party and delivered by the Receiving Party to any Expert pursuant to this Order. The log shall

1 include the names of the reviewers and/or recipients of paper copies and locations where the paper
2 copies are stored. Upon advance notice of five (5) business days to the Receiving Party by the
3 Producing Party, the Receiving Party shall provide a copy of this log to the Producing Party. All
4 paper copies of the source code, or pages containing printed portions of the source code, including
5 all such pages that may be printed by the Receiving Party, shall bear the watermark "HIGHLY
6 CONFIDENTIAL – SOURCE CODE" across each printed page.

7 The Producing Party may challenge the amount of source code requested by the
8 Receiving Party in hard copy form pursuant to the dispute resolution procedure and timeframes
9 set forth in Section 6 whereby the Producing Party is the "Challenging Party" and the Receiving
10 Party is the "Designating Party" for purposes of dispute resolution.

11 8.4 Maintenance of Paper Copies. The Receiving Party shall securely maintain all printed
12 copies of code in a locked room or cabinet at the office of the Receiving Party's Outside Counsel of
13 Record when not in use and shall destroy those copies as soon as they are no longer needed. An
14 Expert, pursuant to Sections 7.3 and/or 7.4(b), preparing or submitting a report may keep in his or
15 her office a paper copy of those portions of the code pertinent to the report and anticipated
16 testimony subject to the following conditions: (1) the Receiving Party shall disclose the location of
17 the Expert's office and the specific security precautions to be taken and shall not allow code to be
18 stored at the Expert's office until the Producing Party has approved the security precautions, which
19 the Producing Party shall not unreasonably withhold; (2) the Receiving Party's Outside Counsel of
20 Record shall keep a log of the transmission of any paper copies of the code provided to the Expert;
21 (3) the Expert shall not copy the printed copies of the code, which must be securely maintained in a
22 locked cabinet in the Expert's office accessible only to the Expert and any staff working on this
23 action who have signed the form attached hereto as Exhibit A and otherwise comply with Section
24 8.1; (4) upon service or submission of the final report or testimony necessitating the code, the
25 Expert shall return all paper copies of the code to the Receiving Party's Outside Counsel of Record;
26 (5) the Receiving Party's Outside Counsel of Record shall certify it has received all paper copies of
27 the code from the Expert; and (6) upon completion of the Expert's work, the Expert shall certify
28 that all paper copies of the code provided to the Expert have been returned to the Receiving Party's

1 Outside Counsel of Record or destroyed.

2 Neither Receiving Party's Outside Counsel of Record nor anyone acting on behalf of the
3 Receiving Party may convert paper copies of the code into electronic format (including for
4 emailing), except as needed for filing or service of papers (including reports of Experts and
5 discovery responses), motions, exhibits and pleadings (all made under seal), or trial or hearing
6 presentation, in which case such electronic copies of the code may be used only for those
7 purposes. Paper copies of the code may not themselves be copied, except for use as exhibits for a
8 deposition, expert report, motion, filing, hearing or trial. If the Producing Party provides copies
9 on non-copyable paper, the Receiving Party's Outside Counsel of Record may request an
10 additional copy for those uses.

11 9. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
12 LITIGATION

13 If a Party is served with a subpoena or a court order issued in other litigation that compels
14 disclosure of any information or items designated in this action as "CONFIDENTIAL,"
15 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY," or "HIGHLY CONFIDENTIAL
16 – SOURCE CODE" that Party must:

17 (a) Promptly notify in writing the Designating Party. Such notification shall include a
18 copy of the subpoena or court order.

19 (b) Promptly notify in writing the Party who caused the subpoena or order to issue in the
20 other litigation that some or all of the material covered by the subpoena or order is subject to this
21 Order. Such notification shall include a copy of this Order.

22 (c) Cooperate with respect to all reasonable procedures sought to be pursued by the
23 Designating Party whose Protected Material may be affected.

24 If the Designating Party timely seeks a protective order, the Party served with the
25 subpoena or court order shall not produce any information designated in this action as
26 "CONFIDENTIAL," "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY," or
27 "HIGHLY CONFIDENTIAL – SOURCE CODE" before a determination by the court from which
28 the subpoena or order issued, unless the Party has obtained the Designating Party's permission.

1 The Designating Party shall bear the burden and expense of seeking protection in that court of its
2 confidential material – and nothing in these provisions should be construed as authorizing or
3 encouraging a Receiving Party in this action to disobey a lawful directive from another court.

4 10. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS
5 LITIGATION

6 (a) The terms of this Order apply to information produced by a Non-Party in this action
7 and designated as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
8 ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE CODE.” Such information produced by
9 Non-Parties in connection with this litigation is protected by the remedies and relief provided by
10 this Order. Nothing in these provisions should be construed as prohibiting a Non-Party from
11 seeking additional protections.

12 (b) In the event a Party is required, by a valid discovery request, to produce a Non-
13 Party’s confidential information in its possession, and the Party is subject to an agreement with
14 the Non-Party not to produce the Non-Party’s confidential information, then the Party shall:

- 15 1. Promptly notify in writing the Requesting Party and the Non-Party that some
16 or all of the information requested is subject to a confidentiality agreement with a
17 Non-Party;
- 18 2. Promptly provide the Non-Party with a copy of this Order, the relevant
19 discovery request(s), and a reasonably specific description of the information
20 requested; and
- 21 3. Make the information requested available for inspection by the Non-Party.

22 (c) If the Non-Party fails to object or seek a protective order from this Court within 14
23 days of receiving the notice and accompanying information, the Receiving Party may produce the
24 Non-Party’s confidential information responsive to the discovery request. If the Non-Party timely
25 seeks a protective order, the Receiving Party shall not produce any information in its possession
26 or control that is subject to the confidentiality agreement with the Non-Party before a
27 determination by the Court. Absent a court order to the contrary, the Non-Party shall bear the
28 burden and expense of seeking protection in this Court of its Protected Material.

11. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person(s) to whom unauthorized disclosures were made of all of the terms of this Order, and (d) request person(s) to execute the "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A.

12. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order that provides for production without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the Parties agree on the effect of disclosure of a communication or information covered by the attorney-client privilege or work product protection, the Parties may incorporate their agreement in this Order.

13. MISCELLANEOUS

13.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the Court in the future.

13.2 Right to Assert Other Objections. By stipulating to the entry of this Order, no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Order.

13.3 Filing Protected Material. Without written permission from the Designating Party or a court order secured after appropriate notice to all interested persons, a Party may not file in the public record in this action any Protected Material. A Party that seeks to file under seal any

1 Protected Material must comply with Civil Local Rule 79-5. Specifically:

2 (a) The Party submitting the Protected Material shall submit to the court an
3 Administrative Motion to File Under Seal along with a declaration, proposed order, redacted
4 version of the Protected Material sought to be filed under seal, and an unredacted version of the
5 Protected Material sought to be filed under seal as described in Civil Local Rule 79-5(d).

6 (b) If the Party submitting the Protected Material is not the Designating Party, then the
7 Party submitting the Protected Material must make the showing required by Civil Local Rule 79-
8 5(e).

9 (c) A sealing order will issue only upon a request made in conformance with Civil Local
10 Rule 79-5 that establishes the Protected Material at issue is privileged, protectable as a trade secret,
11 or otherwise entitled to protection under the law.

12 (d) Protected Material may only be filed under seal pursuant to a court order authorizing
13 the sealing of the specific Protected Material at issue, except as provided in Civil Local Rule 79-
14 5(c).

15 (e) If a Receiving Party's request to file Protected Material under seal pursuant to Civil
16 Local Rule 79-5(e) is denied by the Court, then the Receiving Party may file the Protected Material
17 in the public record pursuant to Civil Local Rule 79-5(e)(2), unless otherwise instructed by the
18 Court.

19 14. FINAL DISPOSITION

20 Within 60 days after the final disposition of this action, as defined in Section 4, each
21 Receiving Party must return all Protected Material to the Producing Party or destroy such
22 material. As used in this subdivision, "all Protected Material" includes all copies, abstracts,
23 compilations, summaries, and any other format reproducing or capturing any of the Protected
24 Material. Whether the Protected Material is returned or destroyed, the Receiving Party must
25 submit a written certification to the Producing Party (and, if not the same person or entity, to the
26 Designating Party) by the 60-day deadline that (1) identifies (by category, where appropriate) all
27 the Protected Material that was returned or destroyed, and (2) affirms the Receiving Party has not
28 retained any copies, abstracts, compilations, summaries, or any other format reproducing or

1 capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to
2 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,
3 legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work
4 product, and consultant and expert work product, even if such materials contain Protected
5 Material. Any such archival copies that contain or constitute Protected Material remain subject to
6 this Order as set forth in Section 4 (DURATION).

7 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

8
9 Dated: June 18, 2014

GROUPME, INC.

10
11 By: /s/Bryan A. Merryman
12 Bryan A. Merryman

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1 Dated: June 18, 2014

BRIAN GLAUSER

2
3
4 By: /s/ Benjamin H. Richman
Benjamin H. Richman

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20
21 PURSUANT TO STIPULATION, IT IS SO ORDERED.

22 DATED: June __, 2014

23 HON. PHYLLIS J. HAMILTON
24 UNITED STATES DISTRICT JUDGE

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____
[print or type full address], declare under penalty of perjury that I have read in its entirety and
understand the Stipulated Protective Order that was issued by the United States District Court for
the Northern District of California on June __, 2014, in the case of *Glauser v. Twilio, Inc., et al.*,
No. 4:11-cv-02584-PJH. I agree to comply with, and to be bound by, all terms of this Stipulated
Protective Order, and I understand and acknowledge that failure to so comply could expose me to
sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in
any manner any information or item that is subject to this Stipulated Protective Order to any person
or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the
Northern District of California for the purpose of enforcing the terms of this Stipulated Protective
Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ [print or type full name] of
_____ [print or type full address and telephone number]
as my California agent for service of process in connection with this action or any proceeding
related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____
[printed name]

Signature: _____
[signature]

CERTIFICATION

I, Bryan A. Merryman, am one of the attorneys of record for defendant GroupMe, Inc. Benjamin H. Richman, attorney of record for plaintiff Brian Glauser, gave White & Case LLP, as attorneys of record for GroupMe, Inc., concurrence in the filing of the document titled **“STIPULATED PROTECTIVE ORDER FOR LITIGATION INVOLVING HIGHLY SENSITIVE CONFIDENTIAL INFORMATION AND/OR TRADE SECRETS,”** which concurrence shall serve in lieu of his signature on that filed document. I have obtained and will maintain records to support this concurrence for subsequent production for the Court if so ordered or for inspection upon request by a party until one year after final resolution of the action (including appeal, if any).

/s/ Bryan A. Merryman

1 **CERTIFICATE OF SERVICE**

2 I, Bryan A. Merryman, one of the attorneys of record for defendant GroupMe, Inc., hereby
3 certify that on June 18, 2014, I electronically filed the document titled “**STIPULATED**
4 **PROTECTIVE ORDER FOR LITIGATION INVOLVING HIGHLY SENSITIVE**
5 **CONFIDENTIAL INFORMATION AND/OR TRADE SECRETS.**” This document was filed
6 with the Court using the CM/ECF system. Notice of this filing will be sent to all named counsel
7 and parties by operation of the Court’s electronic filing system.

8
9 /s/ Bryan A. Merryman
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